

The complaint

Mr C complains that Santander UK Plc (Santander) won't refund the money he lost when he was the victim of a scam.

What happened

Mr C has explained that he was an inexperienced investor (having invested once 15/20 years before) and had no experience at all of online investing or dealing with large financial transfers. In February 2019 he was looking to invest the majority of his life savings. He came across an advertisement for a company and viewed a promotional video before supplying his contact details. Soon after Mr C received a call back from company X to discuss investment opportunities. Mr C questioned why he was being called by a different company (as he hadn't left his contact details with company X) and was told that company X was an international investment company and was the parent company of the one he'd supplied his details to.

Mr C says he looked up company X on the FCA register and found it online so was satisfied he was dealing with a genuine company. He decided to invest so provided anti-money laundering documentation. Mr C then tried to make an online payment but wasn't able to so he called Santander and explained the system wouldn't let him make the payment. Mr C was taken through security before the conversation below took place,

Santander: So who is it you are paying?

Mr C: [name of company Y]

Santander: Have you paid before?

Mr C: No I haven't [account details provided]

Santander: If you've received an invoice, bank account or payment details by email this could be a scam. Criminals can hack email accounts and spoof email addresses to redirect funds to fraudulent accounts for large purchases such as this. We always suggest you check the payment details by phone or in person before making the transfer. Are you comfortable to continue with this new payment?

Mr C: Yes I have done some checks because ... it was a large amount. I've checked with the Financial Conduct Authority about the company erm and that's all checked out OK so erm and I've checked with various other bits. I'm naturally a bit careful about these things so um make sure they were a company indeed and they are. Erm, it's [named company X] is the company and I've checked them on fca.org.uk.

Santander: You've done your due diligence then sir, you're comfortable?

After he'd made the payment Mr C was given access to an online platform so that he could see how his investment was performing.

Mr C then said the company had asked for confirmation of payment to be emailed to it. The Santander adviser noted that this was "strange" as surely the company would see the faster payment. He then asked a manager how Mr C might provide this evidence to the payee. As part of Santander's process Mr C received a call back from Santander to make the payment of £59,998.67.

A few days later company X called Mr C to discuss another investment. Mr C didn't have the funds required but it was agreed Mr C's initial investment would be moved and he'd pay a further £19,564. Mr C completed this payment online and received a text from Santander to ask if the payment was genuine but says Santander didn't complete any other checks.

On 10 March 2019 Mr C couldn't log in to his investment account and was unable to contact company X by phone or email. A few days later he discussed his concerns with family members and became aware that company X was a clone of a genuine company and he was the victim of a scam. He reported the scam to Santander on 13 March 2019 and Santander contacted both of the payee banks on the same day. The bank the first payment of £59,998.67 was paid to (bank A) confirmed that no funds remained. The bank that received the second payment (bank B) returned £9,654 to Mr C on 22 May 2019.

What Santander say

Santander hasn't refunded Mr C. It says he authorised the transactions and successfully completed security. Santander also says it has tried to recover Mr C's funds by contacting the two receiving banks. Turning to the call between Mr C and Santander before the first payment was made Santander say it discussed the payment with Mr C, asked relevant questions and provided him with a fraud warning.

Our investigation so far

The investigator didn't uphold the complaint. She noted that the first payment was made in a call with Santander and that the questions Mr C was asked weren't very detailed. So the investigator went on to consider whether asking further questions during this call would have made a difference. She determined the payment wouldn't have been prevented. This was because she said Mr C had completed extensive research before transferring funds and would have been able to give plausible responses to any questions asked. In relation to the second payment, the investigator noted Mr C confirmed it to be genuine. Again, she felt that Santander should have done more to probe this payment. But for the same reasons as the first payment, the investigator felt that if Santander asked further questions the scam would not have unfolded so the payment would still have been made.

The investigator also felt Santander acted reasonably in recovering Mr C's funds. It contacted both receiving banks on the day the scam was reported. Bank A confirmed that no funds remained, and bank B said that given the nature of the account it was unable to provide the requested information (but later refunded £9,654).

Mr C didn't agree with the investigator and asked that an ombudsman consider his complaint, so it's been passed to me. In summary he said:

- Santander's fraud systems are insufficient and its measures negligent, as both transactions were flagged but still processed.
- If Santander had asked relevant questions and provided scam information and warnings Mr C would have been put on notice that the checks he'd completed were inadequate.
- In relation to the first payment, the investigator referred to a scam script but not its wording. Mr C went on to say it was negligent of Santander to allow the payment on the basis he confirmed he'd checked company X was a genuine company registered with the FCA and was happy to make the payment. This was not sufficient to prevent a scam of this nature and reflects a lack of staff training. He should have been told of the existence of cloned investment firms and how to check he was dealing with a genuine one to enable him to make appropriate checks.

- In relation to the second transaction Mr C repeated the comments he made about the first and added that Santander now provides greater warnings. Mr C said a text message isn't sufficient.
- He doesn't understand how bank B can't trace his funds and asked if this service can get this information.
- The steps Santander took to recover funds from bank A payment were insufficient and demonstrate a lack of care. Santander only chased bank A on 5 May, 5 July and once more in November 2019.
- Mr C raised points about Santander's ethos and staff training.

I contacted Santander to set out why I think Mr C's complaint should be upheld but Santander didn't agree so after considering its response I issued a provisional decision on 8 July 2021. In my provisional decision I said,

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what's fair and reasonable in this case.

However, taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Santander should fairly and reasonably:

- *Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.*
- *Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.*
- *In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.*

In this case, I need to decide whether Santander acted fairly and reasonably in its dealings with Mr C when he authorised payments from his account or whether it could and should have done more before processing them.

Did Santander act fairly and reasonably in Mr C's case?

Mr C's first payment of £59,998.67 was unusual and out of character and this is why Santander flagged it and had a conversation with Mr C. I'd expect Santander to ask probing questions to verify Mr C wasn't being scammed or at risk of financial harm in relation to the unusual and uncharacteristic payment he'd requested.

I've listened to the calls Santander has provided in respect of this first payment and, having done so, I don't think Santander did enough. At no point in the call was Mr C asked what the payment was for and in these circumstances, I can't reasonably conclude that relevant questions were asked, and an appropriate warning given. Mr C was asked who he wanted to pay and was then read an email intercept scam warning, which I set out above, before being asked if he was comfortable to continue with the new payment. Whilst Mr C did receive the payment details by email this scam warning wasn't sufficient in the circumstances of the case. Without knowing the reason for the payment, the adviser was unable to ask relevant questions or provide an investment scam warning.

Mr C volunteered certain information that wasn't requested. He explained that it was a large sum of money and he wished to be careful. He said he'd done some checks and looked at the FCA website so knew the company existed. The agent didn't seem to me to be interested in this information and didn't ask any questions at all about the information Mr C gave. Instead he said, "Done your due diligence then sir, you're comfortable?"

I consider Santander should have asked the purpose of the payment, some information about the investment like how Mr C found out about it and the expected rate of return and what Mr C had checked on the FCA website. I'd also expect Santander to provide appropriate investment scam warnings, including the prevalence of fake and cloned investment companies and how to avoid falling victim to this type of scam.

I've thought carefully about whether the kind of questions I believe ought fairly and reasonably to have been asked by Santander would have made a difference in this case. Having done so, it's my belief that had Santander asked proportionate questions and given Mr C a warning about investment scams he wouldn't have made the payment without completing further checks. Mr C was clear in his call with Santander that he'd checked company X existed. If he'd been made aware that investment companies could be cloned, I believe Mr C would have used the contact details on the FCA register to get in touch with the genuine investment company, at which point the scam would have been uncovered. He told Santander that he was "naturally a bit careful" about making the payment. I believe this is why he did the checks he considered were appropriate. But his checks didn't go far enough because Mr C wasn't aware that investment companies could be cloned or could create fake platforms, and that he wasn't communicating with a genuine investment company.

Had Mr C been provided with a warning I believe he would have taken additional steps before making the payment – and ultimately wouldn't have made it. Mr C wasn't alert to the potential for fake investment companies to appear as genuine ones and provide a fake platform. Santander was the expert here and Mr C an inexperienced investor and I feel Santander should have done more to ensure Mr C wasn't at risk of being defrauded. I see no reason why Mr C wouldn't have taken Santander's warnings seriously if he'd been cautioned to consider and check the legitimacy of the investment before proceeding. I've seen no indication that Mr C was so anxious to proceed that he would have ignored warnings or been unprepared to postpone the payment to reflect on the matter and make further enquiries.

The investigator reached a different view and said Mr C had completed an extensive search. I disagree. As I've said above, Mr C was clear in his call with Santander that he

had checked that the company he thought he was dealing with existed, but this wasn't enough to protect him from a scam of this nature.

In the call when the first payment was made Mr C also volunteered that he was paying company X but the transfer was to company Y. He wasn't asked any questions about why this was the case. The adviser also noted it was strange that Mr C had been asked to email proof of payment when he was making a faster payment. These points are noteworthy when combined with the other facts of the case.

Given what I have said about the first payment it follows that I also consider that Mr C's second payment should have been refunded – this payment wouldn't have been made if the scam had been uncovered when the first payment was made.

I've also thought about whether Mr C did enough to protect himself. I think he did. Mr C checked that company X existed but didn't know this wasn't enough to protect himself from this type of scam. A clone warning appeared on the FCA website in March 2019, after Mr C had made payments the previous month.

Mr C has raised concerns about Santander's efforts to recover his lost funds. In light of my conclusions above, it isn't necessary in this case to consider whether Santander also exercised enough care and urgency in trying to recover funds from the payee banks. But for completeness, I consider Santander acted reasonably in contacting the beneficiary banks on the day Mr C notified it of the fraud and that Santander appropriately chased bank B for a response. The payments were made on 14 and 23 February 2019 and the fraud was reported to Santander on 13 March. Fraudsters usually move funds on very quickly which appears to have happened in this case.

Finally, I've considered whether Santander should pay Mr C compensation for the distress and inconvenience he's experienced as a result of its actions. In considering what's fair compensation, I've specifically thought about the impact of Santander's actions, rather than the impact of the crime itself and I've also taken into account that much of the distress and inconvenience Mr C has experienced was ultimately as a result of the actions of a cruel scammer.

Overall, I think Santander's failure to act has had an impact on Mr C which could've been prevented if Santander had acted as I think it ought to have. Mr C has explained that, "losing my life savings has caused me untold stress and worry". So, for these reasons I think Santander should pay Mr C £200 for the trouble and upset caused.

Putting things right

For all the reasons I've explained, I'm satisfied it's fair and reasonable, in the particular circumstances of this complaint, to say Santander ought to have done more to help Mr C. Had it done so, I'm persuaded Mr C wouldn't have suffered the loss of £69,908.67.

Both parties responded to my provisional decision and said they had no further comments to add.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've also taken in to account the same considerations as I set out in my provisional decision.

After reviewing my provisional decision both parties confirmed they had no further comments to add. For the same reasons as I set out in my provisional decision (and reproduced above) I have reached the same conclusion I set out in my provisional decision. So I consider Santander should refund Mr C the amount he lost in the scam together with interest and compensation as set out below.

My final decision

I require Santander UK Plc to:

- Refund Mr C £69,908.67 less any further sums recovered;
- Pay interest on the above sum at the rate of 8% simple per year from the date of each payment to the date of settlement. If Santander deducts tax from the interest element of this award, it should provide Mr C with an appropriate tax deduction certificate;
- Pay £200 for the distress and inconvenience it caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 14 September 2021.

Jay Hadfield
Ombudsman